

Unofficial Copy

1997 Regular Session

EMERGENCY BILL

M3

7lr2026

CF 7lr0001

By: Senators Frosh, Blount, and the President (Administration), and Senators Collins, Conway, Craig, Dyson, Hollinger, McCabe, Pinsky, Sfikas, and Stoltzfus

Introduced and read first time: January 24, 1997

Assigned to: Economic and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 13, 1997

CHAPTER _____

1 AN ACT concerning

2 **Brownfields - Voluntary Cleanup and Revitalization Programs**

3 FOR the purpose of establishing a Voluntary Cleanup Program in the Maryland
4 Department of the Environment (MDE); establishing a Voluntary Cleanup Fund
5 administered by MDE; requiring MDE to adopt certain regulations; establishing
6 certain application requirements, including the payment of a certain fee;
7 establishing certain requirements for MDE's determination of whether to approve
8 an application; authorizing MDE to notify an applicant of a certain determination
9 of no further requirements at the applicant's property, subject to certain conditions;
10 establishing procedures for the payment of certain additional costs or the refund of
11 certain application fees under certain circumstances; establishing certain
12 requirements upon approval of an application; establishing certain requirements
13 and procedures for the proposal and approval of response action plans; requiring a
14 participant to file a certain bond or other security for certain purposes; requiring
15 MDE to review certain standards in a certain time period and authorizing MDE to
16 revise the standards; establishing certain procedures for public participation in
17 MDE's process of approving response action plans; establishing certain
18 requirements for MDE's decision on a proposed response action plan, including the
19 issuance of a certain letter that provides the participant with certain assurances;
20 establishing certain procedures and requirements for the withdrawal of an
21 application or response action plan; requiring a participant to notify MDE that a
22 response action plan has been completed; requiring MDE to issue a certificate of
23 completion, that includes certain information and certain assurances, under certain
24 circumstances; requiring MDE to send a copy of a certificate of completion to the
25 director of the Department of Assessments and Taxation within a certain time
26 period; establishing certain conditions under which MDE retains enforcement
27 authority against certain persons; authorizing the transfer of certain documents

2

1 under certain circumstances; requiring certain documents to be recorded in certain
 2 land records under certain circumstances; defining certain terms; altering certain
 3 definitions applicable to certain programs to allow certain lenders to take certain
 4 actions under certain circumstances subject to certain conditions; providing that
 5 certain provisions of law apply to enforce certain violations; providing that this Act
 6 does not affect the planning and zoning authority of a county or municipal
 7 corporation and certain tort actions; establishing a Brownfields Revitalization
 8 Program in the Department of Business and Economic Development (DBED);
 9 authorizing taxing jurisdictions to elect whether to participate in the Program;
 10 authorizing DBED to select Brownfields sites based on certain criteria; requiring
 11 DBED to consult with certain persons during a certain time; establishing a
 12 Brownfields Revitalization Incentive Fund comprised of certain moneys and
 13 administered by DBED; requiring taxing jurisdictions participating in the Program
 14 to establish a certain property tax credit for a certain period of time and for a
 15 certain amount; authorizing a participating taxing jurisdiction to grant a certain
 16 additional property tax credit up to a certain amount; authorizing a State property
 17 tax credit under certain circumstances; requiring a participating taxing jurisdiction
 18 to contribute to the Brownfields Revitalization Incentive Fund for a certain period
 19 of time and for a certain amount; establishing certain requirements for the return of
 20 a proportional share of certain funds to certain jurisdictions; requiring certain
 21 taxing jurisdictions to terminate certain property tax credits under certain
 22 circumstances; authorizing the governing body of a county or municipal corporation
 23 to grant a tax abatement for certain taxes for certain properties; requiring MDE to
 24 report to the Governor and certain committees of the General Assembly on the
 25 Voluntary Cleanup Program and Fund by certain dates; requiring DBED to report
 26 to the Governor and certain committees of the General Assembly on the
 27 Brownfields Revitalization Incentive Program by certain dates; requiring the
 28 transfer of certain moneys between certain funds providing for the construction of
 29 certain provisions of this Act; making this Act an emergency measure; and generally
 30 relating to the establishment of a Voluntary Cleanup Program and Brownfields
 31 Revitalization Program.

32 BY repealing and reenacting, with amendments,
 33 Article - Environment
 34 Section 4-401(i) and 7-201(x)
 35 Annotated Code of Maryland
 36 (1996 Replacement Volume and 1996 Supplement)

37 BY adding to
 38 Article - Environment
 39 Section 4-401(l), 7-201(n-1), and 7-501 through 7-516, inclusive, to be under the
 40 new subtitle "Subtitle 5. Voluntary Cleanup Program"
 41 Annotated Code of Maryland
 42 (1996 Replacement Volume and 1996 Supplement)

43 BY adding to
 44 Article 83A - Department of Business and Economic Development

3
1 Section 3-901 through 3-905, inclusive, to be under the new subtitle "Subtitle 9.
2 Brownfields Revitalization Incentive Program"
3 Annotated Code of Maryland
4 (1995 Replacement Volume and 1996 Supplement)

5 BY adding to
6 Article - Tax - Property
7 Section ~~9-109~~ 9-229 and 14-902
8 Annotated Code of Maryland
9 (1994 Replacement Volume and 1996 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Environment**

13 4-401.

14 (i) (1) "Person responsible for the discharge" includes:

15 (i) The owner of the discharged oil;

16 (ii) The owner, operator, or person in charge of the oil storage facility,
17 vessel, barge, or vehicle involved in the discharge at the time of or immediately before the
18 discharge; and

19 (iii) Any other person who through act or omission causes the
20 discharge.

21 (2) "Person responsible for the discharge" does not include:

22 (I) [a] A person who, without participating in the management of an
23 underground oil storage tank, and who otherwise is not engaged in petroleum production,
24 refining, or marketing, holds indicia of ownership in an underground oil storage tank
25 primarily to protect its security interest in that underground oil storage tank if that
26 person:

27 [(i)] 1. Has not foreclosed on its security interest in the underground
28 oil storage tank; or

29 [(ii)] 2. Abandoned that underground oil storage tank under
30 regulations of the Department within 180 days of acquiring the tank through foreclosure
31 or other means;

32 (II) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO
33 ACQUIRES TITLE TO A PROPERTY THAT IS SUBJECT TO A CORRECTIVE ACTION PLAN
34 APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE PROVIDED THAT THE
35 HOLDER COMPLIES WITH THE REQUIREMENTS, PROHIBITIONS, AND CONDITIONS OF
36 THE PLAN;

37 (III) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
38 WHO EXTENDS CREDIT FOR THE PERFORMANCE OF REMOVAL OR REMEDIAL

4

1 ACTIONS CONDUCTED IN ACCORDANCE WITH REQUIREMENTS IMPOSED UNDER
2 THIS TITLE WHO:

3 1. HAS NOT CAUSED OR CONTRIBUTED TO A DISCHARGE OF
4 OIL; AND

5 2. PREVIOUS TO EXTENDING THAT CREDIT, IS NOT A
6 PERSON RESPONSIBLE FOR THE DISCHARGE AT THE SITE; OR

7 (IV) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
8 WHO TAKES ACTION TO PROTECT OR PRESERVE A MORTGAGE OR DEED OF TRUST
9 ON A SITE OR A SECURITY INTEREST IN PROPERTY LOCATED ON A SITE AT WHICH A
10 DISCHARGE OF OIL HAS OCCURRED, BY STABILIZING, CONTAINING, REMOVING, OR
11 PREVENTING THE DISCHARGE OF OIL IN A MANNER THAT DOES NOT CAUSE OR
12 CONTRIBUTE TO A DISCHARGE OF OIL IF:

13 1. THE LENDER PROVIDES ADVANCE WRITTEN NOTICE OF
14 ITS ACTIONS TO THE DEPARTMENT OR IN THE EVENT OF AN EMERGENCY IN WHICH
15 ACTION IS REQUIRED WITHIN 2 HOURS, PROVIDES NOTICE BY TELEPHONE;

16 2. THE LENDER, PREVIOUS TO TAKING THE ACTION, IS NOT
17 A PERSON RESPONSIBLE FOR THE DISCHARGE AT THE SITE; AND

18 3. THE ACTION DOES NOT VIOLATE A PROVISION OF THIS
19 ARTICLE.

20 (3) A LENDER TAKING ACTION TO PROTECT OR PRESERVE A
21 MORTGAGE OR DEED OF TRUST OR SECURITY INTEREST IN PROPERTY LOCATED ON
22 A SITE, WHO CAUSES OR CONTRIBUTES TO A DISCHARGE OF OIL SHALL BE LIABLE
23 SOLELY FOR COSTS INCURRED IN RESPONSE TO THE DISCHARGE WHICH THE
24 LENDER CAUSED OR TO WHICH THE LENDER CONTRIBUTED UNLESS THE LENDER
25 WAS A PERSON RESPONSIBLE FOR THE DISCHARGE BEFORE ACQUIRING A
26 MORTGAGE, DEED OF TRUST, OR SECURITY INTEREST IN THE SITE OR PROPERTY
27 LOCATED ON THE SITE.

28 (L) "LENDER" MEANS A PERSON WHO IS:

29 (1) A HOLDER OF A MORTGAGE OR DEED OF TRUST ON A SITE OR A
30 SECURITY INTEREST IN PROPERTY LOCATED ON A SITE; OR

31 (2) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO ACQUIRES
32 TITLE THROUGH FORECLOSURE OR DEED IN LIEU OF FORECLOSURE.

33 7-201.

34 (N-1) "LENDER" MEANS A PERSON WHO IS:

35 (1) A HOLDER OF A MORTGAGE OR DEED OF TRUST ON A SITE OR A
36 SECURITY INTEREST IN PROPERTY LOCATED ON A SITE; OR

37 (2) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO ACQUIRES
38 TITLE THROUGH FORECLOSURE OR DEED IN LIEU OF FORECLOSURE.

39 (x) (1) "Responsible person" means any person who:

5

1 (i) Is the owner or operator of a vehicle or a site containing a
2 hazardous substance;

3 (ii) At the time of disposal of any hazardous substance, was the owner
4 or operator of any site at which the hazardous substance was disposed;

5 (iii) By contract, agreement, or otherwise, arranged for disposal or
6 treatment, or arranged with a transporter for transport for disposal or treatment, of a
7 hazardous substance owned or possessed by such person, by any other party or entity, at
8 any site owned or operated by another party or entity and containing such hazardous
9 substances; or

10 (iv) Accepts or accepted any hazardous substance for transport to a
11 disposal or treatment facility or any sites selected by the person.

12 (2) "Responsible person" does not include:

13 (i) A person who can establish by a preponderance of the evidence
14 that at the time the person acquired an interest in a site containing a hazardous substance
15 the person did not know and had no reason to know that any hazardous substance which
16 is the subject of the release or threatened release was disposed of on, in, or at the site;
17 however, any person claiming an exemption from liability under this subparagraph must
18 establish that the person had no reason to know, in accordance with § 101(35)(B) of the
19 federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal
20 act;

21 (ii) A person who acquired a property containing a hazardous
22 substance by inheritance or bequest at the death of the transferor;

23 (iii) A person who, without participating in the day-to-day
24 management of a site containing a hazardous substance, holds indicia of ownership in the
25 site or in property located on the site primarily to protect a valid and enforceable lien
26 unless that person directly causes the discharge of a hazardous substance on or from the
27 site;

28 (iv) A holder of a mortgage or deed of trust on a site containing a
29 hazardous substance or a holder of a security interest in property located on the site who
30 does not participate in the day-to-day management of the site unless that holder directly
31 causes the discharge of a hazardous substance on or from the site;

32 (v) A fiduciary who has legal title to a site containing a hazardous
33 substance or to property located on the site containing a hazardous substance for purpose
34 of administering an estate or trust of which the site or property located on the site is a
35 part unless the fiduciary:

36 1. Participates in the day-to-day management of the site or
37 property; or

38 2. Directly causes the discharge of a hazardous substance on or
39 from the site;

40 (vi) A holder of a mortgage or deed of trust who acquires title to a site
41 containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

6

1 1. Does not participate in the day-to-day management of the
2 site; and

3 2. Does not directly cause the discharge of a hazardous
4 substance on or from the site; [or]

5 (vii) Except in the case of gross negligence or willful misconduct, an
6 owner or operator who is:

7 1. A state, county, or municipal government;

8 2. Any other political subdivision of the State; or

9 3. Any unit of a state, county, or municipal government or any
10 other political subdivision;

11 (VIII) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO
12 ACQUIRES TITLE TO AN ELIGIBLE PROPERTY AS DEFINED IN SUBTITLE 5 OF THIS
13 TITLE SUBJECT TO A WRITTEN AGREEMENT IN ACCORDANCE WITH SUBTITLE 5 OF
14 THIS TITLE PROVIDED THAT THE HOLDER COMPLIES WITH THE REQUIREMENTS,
15 PROHIBITIONS, AND CONDITIONS OF THE AGREEMENT;

16 (IX) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
17 WHO EXTENDS CREDIT FOR THE PERFORMANCE OF REMOVAL OR REMEDIAL
18 ACTIONS CONDUCTED IN ACCORDANCE WITH REQUIREMENTS IMPOSED UNDER
19 THIS TITLE WHO:

20 1. HAS NOT CAUSED OR CONTRIBUTED TO A RELEASE OF
21 HAZARDOUS SUBSTANCES; AND

22 2. PREVIOUS TO EXTENDING THAT CREDIT, IS NOT A
23 RESPONSIBLE PERSON AT THE SITE;

24 (X) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
25 WHO TAKES ACTION TO PROTECT OR PRESERVE A MORTGAGE OR DEED OF TRUST
26 ON A SITE OR A SECURITY INTEREST IN PROPERTY LOCATED ON A SITE AT WHICH A
27 RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE HAS
28 OCCURRED, BY STABILIZING, CONTAINING, REMOVING, OR PREVENTING THE
29 RELEASE OF A HAZARDOUS SUBSTANCE IN A MANNER THAT DOES NOT CAUSE OR
30 CONTRIBUTE TO A RELEASE OR SIGNIFICANTLY INCREASE THE THREAT OF
31 RELEASE OF A HAZARDOUS SUBSTANCE AT THE SITE IF:

32 1. THE LENDER PROVIDES ADVANCE WRITTEN NOTICE OF
33 ITS ACTIONS TO THE DEPARTMENT OR IN THE EVENT OF AN EMERGENCY IN WHICH
34 ACTION IS REQUIRED WITHIN 2 HOURS, PROVIDES NOTICE BY TELEPHONE;

35 2. THE LENDER, PREVIOUS TO TAKING THE ACTION, IS NOT
36 A RESPONSIBLE PERSON FOR THE SITE; AND

37 3. THE ACTION TAKEN DOES NOT VIOLATE A PROVISION OF
38 THIS ARTICLE; OR

7

1 (XI) A PERSON WHO RECEIVES A RESPONSE ACTION PLAN
2 APPROVAL LETTER AS AN INCULPABLE PERSON OR THE PERSON'S SUCCESSOR IN
3 TITLE WHO IS ALSO AN INCULPABLE PERSON UNDER SUBTITLE 5 OF THIS TITLE AND
4 WHO DOES NOT CAUSE OR CONTRIBUTE TO NEW CONTAMINATION OR EXACERBATE
5 EXISTING CONTAMINATION AS PROVIDED IN §§ 7-505 AND 7-514 OF THIS TITLE.

6 (3) A LENDER TAKING ACTION TO PROTECT OR PRESERVE A
7 MORTGAGE OR DEED OF TRUST OR SECURITY INTEREST IN A PROPERTY LOCATED
8 ON A SITE, WHO CAUSES OR CONTRIBUTES TO A RELEASE OF A HAZARDOUS
9 SUBSTANCE SHALL BE LIABLE SOLELY FOR COSTS INCURRED AS A RESULT OF THE
10 RELEASE WHICH THE LENDER CAUSED OR TO WHICH THE LENDER CONTRIBUTED
11 UNLESS THE LENDER WAS A RESPONSIBLE PERSON PRIOR TO TAKING THE ACTION.

12 [(3)] (4) (i) Paragraph (2)(i) of this subsection does not affect the
13 liability of a previous owner or previous operator of a site containing a hazardous
14 substance if the previous owner or previous operator is a responsible person under
15 paragraph (1)(ii) of this subsection.

16 (ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall
17 be treated as a responsible person if the person:

18 1. Obtained actual knowledge of the release or threatened
19 release of a hazardous substance at a site when the person owned the real property; and

20 2. Transferred ownership of the property after June 30, 1991
21 without disclosing this knowledge to the transferee.

22 (iii) Nothing in paragraph (2)(i) of this subsection shall affect the
23 liability under this subtitle of a person who, by any act or omission, caused or contributed
24 to the release or threatened release of a hazardous substance at a site which is the subject
25 of the action relating to the site if at the time of the act or omission the person knew or
26 had reason to know that the act or omission would cause or contribute to the release or
27 threatened release of a hazardous substance.

28 [(4)] (5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall
29 be treated as a responsible person if the person:

30 (i) Knew or had reason to know of the release or threatened release
31 of a hazardous substance at the site; and

32 (ii) Transferred ownership of the property after June 30, 1991 without
33 disclosing this knowledge to the transferee.

34 [(5)] (6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this
35 subsection, "management" means directing or controlling operations, production or
36 treatment of a hazardous substance, storage or disposal of a hazardous substance, or
37 remediation of a hazardous substance release.

38 (ii) "Management" does not include rendering advice on financial
39 matters, rendering financial assistance, or actions taken to protect or secure the site or
40 property located on the site if the advice, assistance, or actions do not involve the

8

1 treatment, storage, or disposal of a hazardous substance or remediation of a hazardous
2 substance release.

3 SUBTITLE 5. VOLUNTARY CLEANUP PROGRAM.

4 7-501. DEFINITIONS.

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) (1) "ACTIVE ENFORCEMENT" MEANS AFTER THE DEPARTMENT HAS
8 ISSUED A NOTICE OF VIOLATION, ORDER, CONSENT ORDER, OR OTHER
9 ENFORCEMENT ACTION OF THE DEPARTMENT AND UNTIL COMPLETION OF
10 ACTIVITIES REQUIRED BY THAT ACTION.

11 (2) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, "OTHER
12 ENFORCEMENT ACTION" DOES NOT INCLUDE A SITE COMPLAINT.

13 (C) "APPLICANT" MEANS A PERSON WHO APPLIES TO PARTICIPATE IN THE
14 VOLUNTARY CLEANUP PROGRAM.

15 (D) "BACKGROUND LEVEL" MEANS THE LEVEL OF A SUBSTANCE OCCURRING
16 NATURALLY AT THE SITE PRIOR TO ANY MANMADE SPILL OR RELEASE.

17 (E) "CONTAMINATION" MEANS A RELEASE, DISCHARGE, OR THREATENED
18 RELEASE OF A CONTROLLED HAZARDOUS SUBSTANCE, AS DEFINED IN § 7-201 OF
19 THIS TITLE.

20 (F) "ELIGIBLE APPLICANT" MEANS:

21 (1) A RESPONSIBLE PERSON WHO HAS NOT KNOWINGLY OR WILLFULLY
22 VIOLATED ANY LAW OR REGULATION CONCERNING CONTROLLED HAZARDOUS
23 SUBSTANCES; OR

24 (2) AN INCULPABLE PERSON.

25 (G) (1) "ELIGIBLE PROPERTY" MEANS PROPERTY THAT IS CONTAMINATED
26 OR PERCEIVED TO BE CONTAMINATED.

27 (2) "ELIGIBLE PROPERTY" DOES NOT INCLUDE PROPERTY THAT IS:

28 (I) ON THE NATIONAL PRIORITIES LIST UNDER § 105 OF THE
29 FEDERAL ACT;

30 (II) UNDER ACTIVE ENFORCEMENT; OR

31 (III) SUBJECT TO A CONTROLLED HAZARDOUS SUBSTANCES
32 PERMIT ISSUED IN ACCORDANCE WITH TITLE 7 OF THIS ARTICLE.

33 (3) "ELIGIBLE PROPERTY" INCLUDES SITES LISTED ON THE
34 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
35 INFORMATION SYSTEM.

36 (H) "FEDERAL ACT" HAS THE MEANING STATED IN § 7-201(K) OF THIS TITLE.

9

1 (I) "IMMINENT AND SUBSTANTIAL ENDANGERMENT" MEANS A RELEASE OR
2 THREATENED RELEASE OF A HAZARDOUS SUBSTANCE THAT MAY POSE A RISK OF
3 SIGNIFICANT HARM TO THE PUBLIC HEALTH OR THE ENVIRONMENT AT SOME
4 FORESEEABLE TIME IN THE FUTURE AND IS NOT LIMITED TO AN EMERGENCY
5 SITUATION.

6 (J) (1) "INCULPABLE PERSON" MEANS A PERSON WHO:

7 (I) HAS NO PRIOR OR CURRENT OWNERSHIP INTEREST IN AN
8 ELIGIBLE PROPERTY AT THE TIME OF APPLICATION TO PARTICIPATE IN THE
9 VOLUNTARY CLEANUP PROGRAM; AND

10 (II) HAS NOT CAUSED OR CONTRIBUTED TO CONTAMINATION AT
11 THE ELIGIBLE PROPERTY AT THE TIME OF APPLICATION TO PARTICIPATE IN THE
12 VOLUNTARY CLEANUP PROGRAM.

13 (2) "INCULPABLE PERSON" INCLUDES A SUCCESSOR IN INTEREST IN AN
14 ELIGIBLE PROPERTY ACQUIRED FROM AN INCULPABLE PERSON, AS DEFINED IN
15 PARAGRAPH (1) OF THIS SUBSECTION, IF THE SUCCESSOR IN INTEREST DOES NOT
16 HAVE A PRIOR OWNERSHIP INTEREST IN THE ELIGIBLE PROPERTY AND, OTHER
17 THAN BY VIRTUE OF OWNERSHIP OF THE ELIGIBLE PROPERTY, IS NOT OTHERWISE A
18 RESPONSIBLE PERSON AT THE ELIGIBLE PROPERTY.

19 (K) "PARTICIPANT" MEANS AN APPLICANT ACCEPTED INTO THE VOLUNTARY
20 CLEANUP PROGRAM.

21 (L) "PREVIOUSLY UNDISCOVERED CONTAMINATION" MEANS
22 CONTAMINATION AT AN ELIGIBLE PROPERTY WHICH WAS NOT IDENTIFIED OR
23 ADDRESSED IN A NOTICE OF NO FURTHER REQUIREMENTS OR RESPONSE ACTION
24 PLAN.

25 (M) "PROGRAM" MEANS THE VOLUNTARY CLEANUP PROGRAM ESTABLISHED
26 UNDER THIS SUBTITLE.

27 (N) "RESPONSIBLE PERSON" HAS THE MEANING STATED IN § 7-201(X) OF THIS
28 TITLE.

29 7-502. AUTHORITY OF DEPARTMENT.

30 (A) IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS ARTICLE,
31 THE DEPARTMENT MAY:

32 (1) ACCEPT AND ADMINISTER LOANS AND GRANTS FROM THE FEDERAL
33 GOVERNMENT AND OTHER SOURCES, PUBLIC OR PRIVATE, TO CARRY OUT ANY OF
34 ITS FUNCTIONS UNDER THIS SUBTITLE; AND

35 (2) ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS
36 SUBTITLE.

37 (B) TO IMPLEMENT THE REQUIREMENTS OF THIS SUBTITLE, THE
38 DEPARTMENT SHALL DEVELOP AND USE STANDARDIZED APPLICATIONS,
39 CERTIFICATES OF COMPLETION, AND OTHER FORMS.

10

1 7-503. VOLUNTARY CLEANUP PROGRAM.

2 (A) THERE IS A VOLUNTARY CLEANUP PROGRAM IN THE DEPARTMENT.

3 (B) THE PURPOSE OF THE VOLUNTARY CLEANUP PROGRAM IS TO:

4 (1) ENCOURAGE THE INVESTIGATION OF ELIGIBLE PROPERTIES WITH
5 KNOWN OR PERCEIVED CONTAMINATION;

6 (2) PROTECT PUBLIC HEALTH AND THE ENVIRONMENT WHERE
7 CLEANUP PROJECTS ARE BEING PERFORMED OR NEED TO BE PERFORMED;

8 (3) ACCELERATE CLEANUP OF ELIGIBLE PROPERTIES; AND

9 (4) PROVIDE PREDICTABILITY AND FINALITY TO THE CLEANUP OF
10 ELIGIBLE PROPERTIES.

11 7-504. VOLUNTARY CLEANUP FUND.

12 (A) (1) THERE IS A VOLUNTARY CLEANUP FUND ESTABLISHED AS A
13 NONLAPSING, REVOLVING SPECIAL FUND.

14 (2) MONEYS CREDITED AND ANY INTEREST ACCRUED TO THE FUND:

15 (I) SHALL REMAIN AVAILABLE UNTIL EXPENDED; AND

16 (II) MAY NOT BE REVERTED TO THE GENERAL FUND UNDER ANY
17 OTHER PROVISION OF LAW.

18 (B) ALL APPLICATION FEES AND OTHER MONEYS COLLECTED BY THE
19 DEPARTMENT UNDER THIS SUBTITLE FROM APPLICANTS IN THE PROGRAM SHALL
20 BE PAID TO THE VOLUNTARY CLEANUP FUND.

21 (C) MONEYS APPROPRIATED, GRANTED, LOANED, OR OTHERWISE PROVIDED
22 TO THE DEPARTMENT FOR THE SUPPORT OF THE PROGRAM SHALL BE PAID TO THE
23 VOLUNTARY CLEANUP FUND.

24 (D) THE DEPARTMENT MAY USE:

25 (1) THE APPLICATION FEES IN THE VOLUNTARY CLEANUP FUND FOR
26 ACTIVITIES RELATED TO THE REVIEW OF PROPOSED VOLUNTARY CLEANUP
27 PROJECTS AND THE DIRECT ADMINISTRATIVE OVERSIGHT OF VOLUNTARY
28 CLEANUP PROJECTS, INCLUDING COST RECOVERY AND PROGRAM DEVELOPMENT;
29 AND

30 (2) ANY MONEYS, OTHER THAN APPLICATION FEES, IN THE
31 VOLUNTARY CLEANUP FUND FOR ANY ACTIVITIES RELATING TO THE VOLUNTARY
32 CLEANUP PROGRAM.

33 7-505. LIABILITY OF INCULPABLE PERSON.

34 (A) IF THE DEPARTMENT APPROVES AN APPLICANT'S STATUS AS AN
35 INCULPABLE PERSON UNDER § 7-506(B)(1)(I)1 OF THIS SUBTITLE, THE PARTICIPANT'S
36 STATUS AS AN INCULPABLE PERSON CONTINUES UPON ACQUIRING AN INTEREST IN
37 THE ELIGIBLE PROPERTY.

11

1 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
2 INCULPABLE PERSON IS NOT LIABLE FOR EXISTING CONTAMINATION AT THE
3 ELIGIBLE PROPERTY.

4 (C) AN INCULPABLE PERSON SHALL BE LIABLE FOR:

5 (1) NEW CONTAMINATION THAT THE PERSON CAUSES OR
6 CONTRIBUTES TO AT THE ELIGIBLE PROPERTY; AND

7 (2) EXACERBATION OF EXISTING CONTAMINATION AT THE ELIGIBLE
8 PROPERTY.

9 7-506. APPLICATION REQUIREMENTS.

10 (A) TO PARTICIPATE IN THE PROGRAM, AN APPLICANT SHALL:

11 (1) SUBMIT AN APPLICATION, ON A FORM PROVIDED BY THE
12 DEPARTMENT, THAT INCLUDES:

13 (I) INFORMATION DEMONSTRATING TO THE SATISFACTION OF
14 THE DEPARTMENT THAT THE CONTAMINATION DID NOT RESULT FROM THE
15 APPLICANT KNOWINGLY OR WILLFULLY VIOLATING ANY LAW OR REGULATION
16 CONCERNING CONTROLLED HAZARDOUS SUBSTANCES;

17 (II) INFORMATION DEMONSTRATING THE PERSON'S STATUS AS A
18 RESPONSIBLE PERSON OR AN INCULPABLE PERSON;

19 (III) INFORMATION DEMONSTRATING THAT THE PROPERTY IS AN
20 ELIGIBLE PROPERTY AS DEFINED IN § 7-501 OF THIS SUBTITLE;

21 (IV) A DETAILED REPORT WITH ALL AVAILABLE RELEVANT
22 INFORMATION ON ENVIRONMENTAL CONDITIONS INCLUDING CONTAMINATION AT
23 THE ELIGIBLE PROPERTY KNOWN TO THE APPLICANT AT THE TIME OF THE
24 APPLICATION;

25 (V) AN ENVIRONMENTAL SITE ASSESSMENT THAT INCLUDES
26 ESTABLISHED PHASE I AND PHASE II SITE ASSESSMENT STANDARDS AND FOLLOWS
27 PRINCIPLES ESTABLISHED BY THE AMERICAN SOCIETY FOR TESTING AND
28 MATERIALS AND THAT DEMONSTRATES TO THE SATISFACTION OF THE
29 DEPARTMENT THAT THE ASSESSMENT HAS ADEQUATELY INVESTIGATED ALL
30 POTENTIAL SOURCES AND AREAS OF CONTAMINATION; AND

31 (VI) A DESCRIPTION, IN SUMMARY FORM, OF A PROPOSED
32 VOLUNTARY CLEANUP PROJECT THAT INCLUDES THE PROPOSED CLEANUP
33 CRITERIA UNDER § 7-508 OF THIS SUBTITLE AND THE PROPOSED FUTURE USE OF
34 THE PROPERTY, IF APPROPRIATE; AND

35 (2) PAY TO THE DEPARTMENT AN APPLICATION FEE OF \$6,000.

36 (B) (1) (I) THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN
37 WRITING, WITHIN 60 DAYS AFTER RECEIPT OF THE APPLICATION, WHETHER:

38 1. THE APPLICATION, INCLUDING THE APPLICANT'S STATUS
39 AS A RESPONSIBLE PERSON OR AN INCULPABLE PERSON, IS APPROVED;

12

1 2. THE APPLICATION IS DENIED; OR

2 3. THE DEPARTMENT HAS NO FURTHER REQUIREMENTS
3 RELATED TO THE INVESTIGATION OF CONTROLLED HAZARDOUS SUBSTANCES AT
4 THE ELIGIBLE PROPERTY AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION.

5 (II) IF THE DEPARTMENT DENIES THE APPLICATION, THE
6 DEPARTMENT SHALL PROVIDE TO THE APPLICANT THE REASONS FOR ITS DECISION
7 IN WRITING.

8 (2) (I) AN APPLICANT MAY RESUBMIT AN APPLICATION WITHIN 60
9 DAYS AFTER RECEIPT OF NOTICE OF THE DEPARTMENT'S DECISION TO DENY THE
10 INITIAL APPLICATION.

11 (II) THE DEPARTMENT SHALL APPROVE OR DENY A RESUBMITTED
12 APPLICATION WITHIN 30 DAYS AFTER RECEIPT.

13 (3) IF THE DEPARTMENT NOTIFIES THE APPLICANT THAT THE
14 DEPARTMENT HAS NO FURTHER REQUIREMENTS AT THE ELIGIBLE PROPERTY IN
15 ACCORDANCE WITH PARAGRAPH (1)(I)3 OF THIS SUBSECTION, THE DEPARTMENT
16 SHALL INCLUDE A STATEMENT THAT THIS NOTICE DOES NOT:

17 (I) SUBJECT TO THE PROVISIONS OF § 7-505 OF THIS SUBTITLE,
18 PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY PERSON TO
19 PREVENT OR ABATE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE
20 PUBLIC HEALTH OR THE ENVIRONMENT AT THE ELIGIBLE PROPERTY;

21 (II) REMAIN IN EFFECT IF THE NOTICE OF NO FURTHER
22 REQUIREMENTS IS OBTAINED THROUGH FRAUD OR A MATERIAL
23 MISREPRESENTATION;

24 (III) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
25 ACTION AGAINST A RESPONSIBLE PERSON CONCERNING PREVIOUSLY
26 UNDISCOVERED CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER A NO
27 FURTHER REQUIREMENTS NOTICE HAS BEEN ISSUED BY THE DEPARTMENT; OR

28 (IV) AFFECT THE AUTHORITY OF THE DEPARTMENT TO REQUIRE
29 ADDITIONAL CLEANUP FOR FUTURE ACTIVITIES AT THE SITE THAT RESULT IN
30 CONTAMINATION BY HAZARDOUS SUBSTANCES.

31 (C) (1) THE DEPARTMENT SHALL DENY AN APPLICATION IF:

32 (I) THE APPLICANT IS NOT AN ELIGIBLE APPLICANT;

33 (II) THE PROPERTY IS NOT AN ELIGIBLE PROPERTY; OR

34 (III) THE PROPERTY WAS INITIALLY CONTAMINATED BY A
35 RELEASE OF HAZARDOUS SUBSTANCES AFTER OCTOBER 1, 1997 UNLESS:

36 1. THE PROPERTY IS ACQUIRED BY AN INCULPABLE
37 PERSON; OR

38 2. THE CONTAMINATION WAS CAUSED BY AN ACT OF GOD.

13

1 (2) FOR THE PURPOSES OF PARAGRAPH (1) (III) OF THIS SUBSECTION,
2 ANY PROPERTY IDENTIFIED IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
3 COMPENSATION AND LIABILITY INFORMATION SYSTEM IN ACCORDANCE WITH THE
4 FEDERAL ACT AS OF OCTOBER 1, 1997 IS PRESUMED TO HAVE BEEN INITIALLY
5 CONTAMINATED ON OR BEFORE OCTOBER 1, 1997.

6 (D) (1) IF THE DIRECT COSTS OF REVIEW OF THE APPLICATION AND
7 ADMINISTRATION AND OVERSIGHT OF THE RESPONSE ACTION PLAN EXCEED \$6,000,
8 THE DEPARTMENT SHALL REQUIRE AN APPLICANT OR PARTICIPANT TO PAY TO THE
9 DEPARTMENT THE ADDITIONAL COSTS INCURRED BY THE DEPARTMENT.

10 (2) IF THE DIRECT COSTS OF REVIEW OF THE APPLICATION AND
11 ADMINISTRATION AND OVERSIGHT OF THE RESPONSE ACTION PLAN ARE LESS
12 THAN \$6,000, THE DEPARTMENT SHALL REFUND TO THE APPLICANT OR
13 PARTICIPANT THE DIFFERENCE BETWEEN THE COSTS INCURRED AND THE
14 APPLICATION FEE.

15 (E) (1) WITHIN 30 DAYS AFTER RECEIVING NOTIFICATION OF APPROVAL OF
16 AN APPLICATION, A PARTICIPANT SHALL INFORM THE DEPARTMENT IN WRITING
17 WHETHER THE PARTICIPANT INTENDS TO PROCEED OR WITHDRAW FROM THE
18 PROGRAM.

19 (2) IF A PARTICIPANT DOES NOT NOTIFY THE DEPARTMENT OF THE
20 PARTICIPANT'S INTENT TO PROCEED OR WITHDRAW IN ACCORDANCE WITH
21 PARAGRAPH (1) OF THIS SUBSECTION, THE APPLICATION WILL BE DEEMED TO BE
22 WITHDRAWN.

23 7-507. REQUEST FOR DETERMINATION OF BROWNFIELDS REVITALIZATION
24 INCENTIVE ELIGIBILITY.

25 WHEN AN APPLICANT SUBMITS AN APPLICATION UNDER § 7-506 OF THIS
26 SUBTITLE, THE APPLICANT ALSO MAY SUBMIT A REQUEST TO THE DEPARTMENT OF
27 BUSINESS AND ECONOMIC DEVELOPMENT TO DETERMINE THE APPLICANT'S
28 ELIGIBILITY TO QUALIFY FOR FINANCIAL INCENTIVES FOR THE REDEVELOPMENT
29 OF A BROWNFIELDS SITE IN ACCORDANCE WITH ARTICLE 83A, TITLE 3, SUBTITLE 9
30 OF THE CODE.

31 7-508. REQUIREMENTS OF RESPONSE ACTION PLAN.

32 (A) AFTER THE DEPARTMENT APPROVES AN APPLICATION IN ACCORDANCE
33 WITH § 7-506 OF THIS SUBTITLE, THE PARTICIPANT SHALL DEVELOP A RESPONSE
34 ACTION PLAN THAT INCLUDES:

35 (1) A PLAN FOR ALL WORK NECESSARY TO PERFORM THE PROPOSED
36 RESPONSE ACTION PLAN, INCLUDING LONG-TERM MONITORING AND
37 MAINTENANCE OF THE SITE, IF NECESSARY;

38 (2) A DEMONSTRATION TO THE SATISFACTION OF THE DEPARTMENT
39 THAT THE PROPOSED RESPONSE ACTION PLAN:

40 (I) WILL ACHIEVE THE APPROPRIATE CRITERIA UNDER
41 SUBSECTION (B) OF THIS SECTION; AND

14

1 (II) WILL PROTECT PUBLIC HEALTH AND THE ENVIRONMENT
2 ~~ONCE COMPLETED~~;

3 (3) A CERTIFIED WRITTEN STATEMENT THAT THE PROPERTY MEETS
4 ALL APPLICABLE COUNTY AND MUNICIPAL ZONING REQUIREMENTS; AND

5 (4) ANY OTHER INFORMATION RELATED TO THE PROPOSED RESPONSE
6 ACTION PLAN THAT THE DEPARTMENT MAY REASONABLY REQUIRE TO DETERMINE
7 THAT THE PLAN MEETS THE REQUIREMENTS OF THIS SUBTITLE.

8 (B) A PARTICIPANT SHALL SELECT ONE OR MORE OF THE FOLLOWING
9 CRITERIA THAT PROTECTS PUBLIC HEALTH AND THE ENVIRONMENT, AS MAY BE
10 APPROPRIATE WHEN PROPOSING A RESPONSE ACTION PLAN:

11 (1) UNIFORM NUMERIC RISK-BASED STANDARDS;

12 (2) MEASURABLE STANDARDS BASED ON SITE-SPECIFIC RISK
13 ASSESSMENTS;

14 (3) BACKGROUND LEVELS;

15 (4) FEDERAL OR STATE SOIL STANDARDS OR WATER QUALITY
16 STANDARDS;

17 (5) STANDARDS BASED ON FEDERAL OR STATE MAXIMUM
18 CONTAMINANT LEVELS (MCLS); OR

19 (6) ANY OTHER FEDERAL OR STATE STANDARDS.

20 (C) THE RESPONSE ACTION PLAN SHALL:

21 (1) ENUMERATE THE RESPONSIBILITIES AND DUTIES OF THE
22 DEPARTMENT AND THE PARTICIPANT;

23 (2) INCLUDE A SCHEDULE FOR THE IMPLEMENTATION AND
24 COMPLETION OF THE RESPONSE ACTION PLAN;

25 (3) INCLUDE A WRITTEN AGREEMENT THAT IF THE RESPONSE ACTION
26 PLAN IS APPROVED, THE PARTICIPANT AGREES, SUBJECT TO THE WITHDRAWAL
27 PROVISIONS SET FORTH IN § 7-512 OF THIS SUBTITLE, TO COMPLY WITH THE
28 PROVISIONS OF THE PLAN; AND

29 (4) INCLUDE A PROPOSAL FOR THE FILING OF A PERFORMANCE BOND
30 OR OTHER SECURITY IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION
31 (D) OF THIS SECTION.

32 (D) (1) A PARTICIPANT SHALL FILE A PERFORMANCE BOND OR OTHER
33 SECURITY WITH THE DEPARTMENT WITHIN 10 DAYS AFTER RECEIVING THE
34 DEPARTMENT'S APPROVAL OF A RESPONSE ACTION PLAN AND BEFORE THE
35 PARTICIPANT MAY PERFORM ANY WORK ON THE SITE.

36 (2) (I) THE PERFORMANCE BOND REQUIRED UNDER PARAGRAPH (1)
37 OF THIS SUBSECTION SHALL BE IN AN AMOUNT DETERMINED BY THE DEPARTMENT

15

1 TO BE NECESSARY TO SECURE AND STABILIZE THE SITE BASED ON THE EXTENT OF
2 CONTAMINATION AT THE SITE IF THE RESPONSE ACTION PLAN IS NOT COMPLETED.

3 (II) THE MARKET VALUE OF OTHER SECURITY DEPOSITED UNDER
4 THIS SECTION MAY NOT BE LESS THAN THE AMOUNT SPECIFIED IN SUBPARAGRAPH
5 (I) OF THIS PARAGRAPH.

6 (3) THE OBLIGATION OF THE BOND FILED UNDER THIS SECTION SHALL
7 BE VOID UPON THE ISSUANCE OF A CERTIFICATE OF COMPLETION TO THE
8 PARTICIPANT OR, IF THE PARTICIPANT WITHDRAWS FROM THE PROGRAM, 16
9 MONTHS AFTER THE DATE OF WITHDRAWAL.

10 (4) THE OBLIGATION OF THE PARTICIPANT UNDER THE BOND OR
11 OTHER SECURITY SHALL BECOME DUE AND PAYABLE UPON NOTIFICATION BY THE
12 DEPARTMENT THAT ACTIONS MUST BE TAKEN TO FULFILL THE REQUIREMENTS OF
13 § 7-512 OF THIS SUBTITLE TO THE EXTENT THE REQUIREMENTS OF § 7-512 OF THIS
14 SUBTITLE APPLY TO THE PARTICIPANT.

15 (E) (1) THE DEPARTMENT MAY ADOPT UNIFORM NUMERIC RISK-BASED
16 STANDARDS BY REGULATION BASED ON RESIDENTIAL AND INDUSTRIAL USES
17 UNDER SUBSECTION (B) OF THIS SECTION.

18 (2) THE DEPARTMENT SHALL REVIEW UNIFORM NUMERIC RISK-BASED
19 STANDARDS EVERY 4 YEARS AND MAY REVISE THE STANDARDS.

20 (F) THIS SECTION MAY NOT BE CONSTRUED TO ELIMINATE OR OTHERWISE
21 AFFECT ANY OTHER PROVISION OF LAW REQUIRING A PERSON TO REPORT A
22 RELEASE OR A THREAT OF A RELEASE OF A CONTROLLED HAZARDOUS SUBSTANCE
23 ON A SITE.

24 7-509. PUBLIC PARTICIPATION.

25 (A) UPON SUBMISSION OF A PROPOSED RESPONSE ACTION PLAN, THE
26 PARTICIPANT:

27 (1) SHALL PUBLISH A NOTICE OF A PROPOSED RESPONSE ACTION PLAN
28 ONCE A WEEK FOR 2 CONSECUTIVE WEEKS IN A DAILY OR WEEKLY NEWSPAPER OF
29 GENERAL CIRCULATION IN THE GEOGRAPHICAL AREA IN WHICH THE ELIGIBLE
30 PROPERTY IS LOCATED THAT SHALL INCLUDE:

31 (I) A SUMMARY OF THE PROPOSED RESPONSE ACTION PLAN;

32 (II) THE NAME AND ADDRESS OF THE PARTICIPANT AND ELIGIBLE
33 PROPERTY;

34 (III) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
35 OFFICE WITHIN THE DEPARTMENT FROM WHICH INFORMATION ABOUT THE
36 PROPOSED RESPONSE ACTION PLAN MAY BE OBTAINED;

37 (IV) AN ADDRESS TO WHICH PERSONS MAY SUBMIT WRITTEN
38 COMMENTS ABOUT THE PROPOSED RESPONSE ACTION PLAN OR REQUEST A PUBLIC
39 INFORMATIONAL MEETING; AND

16

1 (V) A DEADLINE FOR THE CLOSE OF THE PUBLIC COMMENT
2 PERIOD BY WHICH WRITTEN COMMENTS OR REQUESTS FOR A PUBLIC
3 INFORMATIONAL MEETING MUST BE RECEIVED BY THE DEPARTMENT; AND

4 (2) SHALL POST AT THE ELIGIBLE PROPERTY A NOTICE OF INTENT TO
5 CONDUCT A RESPONSE ACTION PLAN AT THAT PROPERTY.

6 (B) THE DEPARTMENT SHALL RECEIVE WRITTEN COMMENTS FROM THE
7 PUBLIC FOR 30 DAYS AFTER PUBLICATION AND POSTING REQUIRED UNDER THIS
8 SECTION.

9 (C) THE DEPARTMENT SHALL HOLD A PUBLIC INFORMATIONAL MEETING ON
10 THE PROPOSED RESPONSE ACTION PLAN AT THE PARTICIPANT'S EXPENSE WITHIN 30
11 DAYS AFTER THE DEPARTMENT RECEIVES A WRITTEN REQUEST FOR A MEETING
12 FROM THE APPLICANT OR THE PUBLIC.

13 7-510. STANDARDS FOR APPROVAL OF RESPONSE ACTION PLAN.

14 (A) THE DEPARTMENT SHALL APPROVE A RESPONSE ACTION PLAN IF THE
15 DEPARTMENT DETERMINES THAT THE RESPONSE ACTION PLAN PROTECTS PUBLIC
16 HEALTH AND THE ENVIRONMENT.

17 (B) IN MAKING A DETERMINATION AS TO WHETHER THE CRITERIA
18 SELECTED BY THE PARTICIPANT AND REMEDIAL ACTIONS IN A PROPOSED
19 RESPONSE ACTION PLAN PROTECT PUBLIC HEALTH AND THE ENVIRONMENT, THE
20 DEPARTMENT SHALL CONSIDER WHETHER THE ELIGIBLE PROPERTY IS:

21 (1) LOCATED IN AN INDUSTRIAL AREA AND USED FOR INDUSTRIAL
22 PURPOSES;

23 (2) LOCATED IN A RESIDENTIAL AREA AND USED FOR INDUSTRIAL
24 PURPOSES; OR

25 (3) LOCATED IN A RESIDENTIAL AREA AND USED FOR RESIDENTIAL
26 PURPOSES OR OTHER PURPOSES THAT REQUIRE UNLIMITED PUBLIC ACCESS.

27 (C) THE FAILURE OF THE DEPARTMENT TO ADOPT FINAL REGULATIONS
28 UNDER THIS SUBTITLE MAY NOT PREVENT THE DEPARTMENT FROM APPROVING A
29 RESPONSE ACTION PLAN ON AN INDIVIDUAL PLAN BASIS.

30 7-511. DECISION ON RESPONSE ACTION PLAN AND RESPONSE ACTION PLAN LETTER.

31 (A) WITHIN 120 DAYS AFTER THE DEPARTMENT HAS RECEIVED A PROPOSED
32 RESPONSE ACTION PLAN, THE DEPARTMENT, AFTER CONSIDERING ANY COMMENTS
33 THE DEPARTMENT HAS RECEIVED UNDER § 7-509 OF THIS SUBTITLE, SHALL NOTIFY
34 THE PARTICIPANT IN WRITING THAT:

35 (1) THE RESPONSE ACTION PLAN HAS BEEN APPROVED; OR

36 (2) THE RESPONSE ACTION PLAN HAS BEEN REJECTED AND SHALL
37 STATE THE MODIFICATIONS IN THE RESPONSE ACTION PLAN THAT ARE NECESSARY
38 TO RECEIVE THE DEPARTMENT'S APPROVAL.

17

1 (B) (1) (I) IF THE DEPARTMENT NOTIFIES A PARTICIPANT THAT
2 MODIFICATIONS IN A RESPONSE ACTION PLAN ARE NECESSARY TO RECEIVE THE
3 DEPARTMENT'S APPROVAL, THE PARTICIPANT MAY RESUBMIT THE PLAN WITHIN 120
4 DAYS AFTER RECEIPT OF THE DEPARTMENT'S NOTIFICATION.

5 (II) IF THE PARTICIPANT DOES NOT RESUBMIT THE PLAN WITHIN
6 120 DAYS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PARTICIPANT WILL
7 BE CONSIDERED TO HAVE WITHDRAWN THE PARTICIPANT'S APPLICATION IN
8 ACCORDANCE WITH § 7-512 OF THIS SUBTITLE.

9 (2) WITHIN 30 DAYS AFTER RECEIPT OF A RESUBMITTED PLAN UNDER
10 PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL NOTIFY THE
11 PARTICIPANT WHETHER THE PLAN HAS BEEN APPROVED.

12 (C) THE RESPONSE ACTION PLAN APPROVAL LETTER SHALL STATE THAT,
13 SUBJECT TO THE REQUIREMENTS OF § 7-514 OF THIS SUBTITLE:

14 (1) NO FURTHER ACTION WILL BE REQUIRED TO ACCOMPLISH THE
15 OBJECTIVES SET FORTH IN THE APPROVED RESPONSE ACTION PLAN OTHER THAN
16 THOSE ACTIONS DESCRIBED IN THE APPROVED RESPONSE ACTION PLAN; AND

17 (2) THE PARTICIPANT WILL RECEIVE A CERTIFICATE OF COMPLETION
18 SUBJECT TO THE CONDITIONS AND REQUIREMENTS OF § 7-514(B) OF THIS SUBTITLE
19 IF:

20 (I) THE APPROVED RESPONSE ACTION PLAN IS IMPLEMENTED TO
21 THE SATISFACTION OF THE DEPARTMENT; AND

22 (II) THE RESPONSE ACTION PLAN HAS ACHIEVED THE CLEANUP
23 CRITERIA.

24 (D) A RESPONSE ACTION PLAN APPROVAL LETTER MAY, IF APPLICABLE,
25 SHALL INCLUDE A LIMITATION ON THE PERMISSIBLE USES OF THE PROPERTY THAT
26 IS CONSISTENT WITH THE RESPONSE ACTION PLAN.

27 7-512. WITHDRAWAL PROVISIONS; FAILURE TO COMPLY WITH SCHEDULE.

28 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, A
29 PARTICIPANT MAY WITHDRAW ~~AN APPLICATION OR RESPONSE ACTION PLAN AT~~
30 ~~ANY TIME UNDER THE PROGRAM, INCLUDING FROM THE PROGRAM AT THE TIME~~
31 OF A PENDING APPLICATION OR RESPONSE ACTION PLAN, OR AFTER RECEIVING A
32 CERTIFICATE OF COMPLETION, AND MAY NOT BE OBLIGATED TO COMPLETE AN
33 APPLICATION OR A RESPONSE ACTION PLAN IF THE PARTICIPANT:

34 (1) PROVIDES 10 DAYS WRITTEN NOTICE OF THE ANTICIPATED
35 WITHDRAWAL TO THE DEPARTMENT;

36 (2) STABILIZES AND SECURES THE ELIGIBLE PROPERTY TO THE
37 SATISFACTION OF THE DEPARTMENT TO ENSURE PROTECTION OF THE PUBLIC
38 HEALTH AND THE ENVIRONMENT; AND

39 (3) FORFEITS ANY EXPENDED APPLICATION AND OVERSIGHT FEES.

18

1 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
2 INCULPABLE PERSON WHO WITHDRAWS FROM THE PROGRAM MAY NOT BE
3 REQUIRED BY THE DEPARTMENT TO CLEANUP THE ELIGIBLE PROPERTY.

4 (2) IF AN INCULPABLE PERSON WITHDRAWS FROM THE PROGRAM, THE
5 INCULPABLE PERSON SHALL BE LIABLE FOR NEW CONTAMINATION OR THE
6 EXACERBATION OF EXISTING CONTAMINATION AT THE ELIGIBLE PROPERTY AS
7 PROVIDED IN § 7-505 OF THIS SUBTITLE.

8 (C) IF A RESPONSIBLE PERSON WITHDRAWS FROM THE PROGRAM, THE
9 DEPARTMENT MAY TAKE ANY APPLICABLE ENFORCEMENT ACTION AUTHORIZED
10 UNDER THIS TITLE.

11 (D) IF A PARTICIPANT FAILS TO MEET THE SCHEDULE FOR IMPLEMENTATION
12 AND COMPLETION OF THE RESPONSE ACTION PLAN THAT IS SET FORTH IN THE
13 PLAN, THE DEPARTMENT MAY:

14 (1) REACH AN AGREEMENT WITH THE PARTICIPANT TO REVISE THE
15 SCHEDULE OF COMPLETION IN THE RESPONSE ACTION PLAN; OR

16 (2) IF AN AGREEMENT CANNOT BE REACHED UNDER PARAGRAPH (1)
17 OF THIS SUBSECTION, WITHDRAW APPROVAL OF THE RESPONSE ACTION PLAN.

18 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF
19 THE DEPARTMENT WITHDRAWS APPROVAL OF AN INCULPABLE PERSON'S RESPONSE
20 ACTION PLAN UNDER SUBSECTION ~~(B)(2)~~ (D)(2) OF THIS SECTION, THE INCULPABLE
21 PERSON MAY NOT BE REQUIRED BY THE DEPARTMENT TO COMPLETE THE
22 RESPONSE ACTION PLAN.

23 (2) IF THE DEPARTMENT WITHDRAWS APPROVAL OF AN INCULPABLE
24 PERSON'S RESPONSE ACTION PLAN UNDER SUBSECTION ~~(B)(2)~~ (D)(2) OF THIS
25 SECTION, THE INCULPABLE PERSON:

26 (I) SHALL STABILIZE AND SECURE THE ELIGIBLE PROPERTY TO
27 ENSURE PROTECTION OF THE PUBLIC HEALTH AND THE ENVIRONMENT; AND

28 (II) SHALL BE LIABLE FOR NEW CONTAMINATION OR THE
29 EXACERBATION OF EXISTING CONTAMINATION AT THE ELIGIBLE PROPERTY AS
30 PROVIDED IN § 7-505 OF THIS SUBTITLE.

31 (3) IF THE DEPARTMENT WITHDRAWS APPROVAL OF A RESPONSIBLE
32 PERSON'S RESPONSE ACTION PLAN;:

33 (I) THE RESPONSIBLE PERSON SHALL STABILIZE AND SECURE THE
34 ELIGIBLE PROPERTY TO ENSURE PROTECTION OF THE PUBLIC HEALTH AND THE
35 ENVIRONMENT; AND

36 (II) THE DEPARTMENT MAY TAKE ANY APPLICABLE
37 ENFORCEMENT ACTION AUTHORIZED UNDER THIS TITLE.

38 (F) IF AN APPLICATION, A RESPONSE ACTION PLAN, OR CERTIFICATE OF
39 COMPLETION IS WITHDRAWN UNDER THIS SECTION:

19

1 (1) ANY LETTER OR CERTIFICATE OF COMPLETION ISSUED TO AN
2 APPLICANT OR A PARTICIPANT UNDER THIS SUBTITLE SHALL BE VOID; AND

3 (2) ANY BOND OR OTHER SECURITY SHALL BE MAINTAINED FOR A
4 PERIOD NOT TO EXCEED 16 MONTHS FROM THE DATE THE RESPONSE ACTION PLAN
5 IS WITHDRAWN.

6 7-513. ISSUANCE OF CERTIFICATE OF COMPLETION.

7 (A) (1) UPON COMPLETION OF THE REQUIREMENTS OF THE RESPONSE
8 ACTION PLAN, THE PARTICIPANT SHALL NOTIFY THE DEPARTMENT IN WRITING
9 THAT THE RESPONSE ACTION PLAN HAS BEEN COMPLETED.

10 (2) WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE OF COMPLETION
11 UNDER PARAGRAPH (1) OF THIS SUBSECTION:

12 (I) THE DEPARTMENT SHALL REVIEW THE IMPLEMENTATION
13 AND COMPLETION OF THE RESPONSE ACTION PLAN AT THE ELIGIBLE PROPERTY;
14 AND

15 (II) IF THE DEPARTMENT DETERMINES THAT THE REQUIREMENTS
16 OF THE RESPONSE ACTION PLAN HAVE BEEN COMPLETED TO THE SATISFACTION OF
17 THE DEPARTMENT AND THE RESPONSE ACTION PLAN HAS ACHIEVED THE CLEANUP
18 CRITERIA, THE DEPARTMENT SHALL ISSUE A CERTIFICATE OF COMPLETION.

19 (B) THE CERTIFICATE OF COMPLETION SHALL STATE THAT, SUBJECT TO THE
20 REQUIREMENTS OF § 7-514 (B) OF THIS SUBTITLE:

21 (1) THE REQUIREMENTS OF THE RESPONSE ACTION PLAN HAVE BEEN
22 COMPLETED;

23 (2) THE PARTICIPANT HAS DEMONSTRATED THAT THE
24 IMPLEMENTATION OF THE RESPONSE ACTION PLAN AT THE ELIGIBLE PROPERTY
25 HAS ACHIEVED THE APPLICABLE CLEANUP CRITERIA ~~SELECTED~~ UNDER § 7-508 (B)
26 OF THIS SUBTITLE;

27 (3) THE DEPARTMENT MAY NOT BRING AN ENFORCEMENT ACTION
28 AGAINST THE PARTICIPANT AT THE ELIGIBLE PROPERTY; AND

29 (4) THE PARTICIPANT:

30 (I) IS RELEASED FROM FURTHER LIABILITY FOR THE
31 REMEDIATION OF THE ELIGIBLE PROPERTY UNDER THIS TITLE FOR ANY
32 CONTAMINATION IDENTIFIED IN THE ENVIRONMENTAL SITE ASSESSMENT; AND

33 (II) MAY NOT BE SUBJECT TO A CONTRIBUTION ACTION
34 INSTITUTED BY A RESPONSIBLE PERSON.

35 (C) WITHIN 10 DAYS AFTER THE ISSUANCE OF A CERTIFICATE OF
36 COMPLETION, THE DEPARTMENT SHALL SEND A COPY OF THE CERTIFICATE OF
37 COMPLETION TO THE DIRECTOR OF THE DEPARTMENT OF ASSESSMENTS AND
38 TAXATION.

20

1 (D) A REQUIREMENT FOR LONG-TERM MONITORING AND MAINTENANCE IN
2 THE APPROVED RESPONSE ACTION PLAN MAY NOT DELAY THE ISSUANCE OF THE
3 CERTIFICATE OF COMPLETION UNDER SUBSECTION (A) OF THIS SECTION.

4 7-514. EFFECT OF RESPONSE ACTION PLAN APPROVAL LETTER AND CERTIFICATE OF
5 COMPLETION ON DEPARTMENT'S AUTHORITY AND PARTICIPANT'S LIABILITY.

6 (A) A RESPONSE ACTION PLAN APPROVAL LETTER DOES NOT:

7 (1) SUBJECT TO THE PROVISIONS OF § 7-505 OF THIS SUBTITLE, PREVENT
8 THE DEPARTMENT FROM TAKING ACTION AGAINST ANY PERSON TO PREVENT OR
9 ABATE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH
10 OR THE ENVIRONMENT AT THE ELIGIBLE PROPERTY;

11 (2) REMAIN IN EFFECT IF THE RESPONSE ACTION PLAN APPROVAL
12 LETTER IS OBTAINED THROUGH FRAUD OR A MATERIAL MISREPRESENTATION;

13 (3) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
14 ACTION AGAINST ANY PERSON CONCERNING NEW CONTAMINATION OR THE
15 EXACERBATION OF EXISTING CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER
16 A RESPONSE ACTION PLAN APPROVAL LETTER HAS BEEN ISSUED BY THE
17 DEPARTMENT;

18 (4) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
19 ACTION AGAINST A RESPONSIBLE PERSON CONCERNING PREVIOUSLY
20 UNDISCOVERED CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER A RESPONSE
21 ACTION PLAN APPROVAL LETTER HAS BEEN ISSUED BY THE DEPARTMENT;

22 (5) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
23 PERSON WHO AGREES TO PERFORM THE IS RESPONSIBLE FOR LONG-TERM
24 MONITORING AND MAINTENANCE AS PROVIDED IN THE RESPONSE ACTION PLAN;
25 OR

26 (6) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
27 PERSON WHO DOES NOT COMPLY WITH CONDITIONS ON THE PERMISSIBLE USE OF
28 THE ELIGIBLE PROPERTY CONTAINED IN THE RESPONSE ACTION PLAN APPROVAL
29 LETTER.

30 (B) A CERTIFICATE OF COMPLETION DOES NOT:

31 (1) SUBJECT TO THE PROVISIONS OF § 7-505 OF THIS SUBTITLE, PREVENT
32 THE DEPARTMENT FROM TAKING ACTION AGAINST ANY PERSON TO PREVENT OR
33 ABATE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH
34 OR THE ENVIRONMENT AT THE ELIGIBLE PROPERTY;

35 (2) REMAIN IN EFFECT IF THE CERTIFICATE OF COMPLETION IS
36 OBTAINED THROUGH FRAUD OR A MATERIAL MISREPRESENTATION;

37 (3) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
38 ACTION AGAINST ANY PERSON CONCERNING NEW CONTAMINATION OR
39 EXACERBATION OF EXISTING CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER
40 A CERTIFICATE OF COMPLETION HAS BEEN ISSUED BY THE DEPARTMENT;

21

1 (4) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
2 ACTION AGAINST ANY A RESPONSIBLE PERSON CONCERNING PREVIOUSLY
3 UNDISCOVERED CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER A
4 CERTIFICATE OF COMPLETION HAS BEEN ISSUED BY THE DEPARTMENT;

5 (5) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
6 PERSON WHO IS RESPONSIBLE FOR LONG-TERM MONITORING AND MAINTENANCE
7 FOR FAILURE TO COMPLY WITH THE RESPONSE ACTION PLAN;

8 (6) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
9 PERSON WHO DOES NOT COMPLY WITH CONDITIONS ON THE PERMISSIBLE USE OF
10 THE ELIGIBLE PROPERTY CONTAINED IN THE CERTIFICATE OF COMPLETION; OR

11 (7) SUBJECT TO THE PROVISIONS OF § 7-512 OF THIS SUBTITLE, PREVENT
12 THE DEPARTMENT FROM REQUIRING ANY PERSON TO TAKE FURTHER ACTION IF
13 THE ELIGIBLE PROPERTY FAILS TO MEET THE APPLICABLE CLEANUP CRITERIA SET
14 FORTH IN THE RESPONSE ACTION PLAN APPROVED BY THE DEPARTMENT.

15 (C) A RESPONSE ACTION PLAN APPROVAL LETTER OR A CERTIFICATE OF
16 COMPLETION MAY BE TRANSFERRED TO ANY PERSON WHOSE ACTIONS DID NOT
17 CAUSE OR CONTRIBUTE TO THE CONTAMINATION.

18 (D) (1) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE
19 PERMISSIBLE USE OF THE PROPERTY FOR INDUSTRIAL OR COMMERCIAL PURPOSES,
20 THE PARTICIPANT SHALL RECORD THE CERTIFICATE OF COMPLETION IN THE LAND
21 RECORDS OF THE LOCAL JURISDICTION WITHIN 30 DAYS AFTER RECEIVING THE
22 CERTIFICATE.

23 (2) IF THE CERTIFICATE OF COMPLETION HAS A CONDITIONED USE
24 AND THE PARTICIPANT FAILS TO RECORD THE CERTIFICATE OF COMPLETION IN
25 THE LAND RECORDS IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION,
26 THE CERTIFICATE OF COMPLETION SHALL BE VOID.

27 (E) SUBJECT TO § 7-516(A) OF THIS SUBTITLE, IF AN OWNER OF AN ELIGIBLE
28 PROPERTY THAT HAS LIMITED PERMISSIBLE USES WANTS TO CHANGE THE USE OF
29 THE ELIGIBLE PROPERTY, THE OWNER, SUBJECT TO APPROVAL BY THE
30 DEPARTMENT, IS RESPONSIBLE FOR THE COST OF CLEANING UP THE ELIGIBLE
31 PROPERTY TO THE APPROPRIATE STANDARD.

32 7-515. ENFORCEMENT PROVISIONS.

33 THE PROVISIONS OF §§ 7-256 THROUGH 7-268 OF THIS TITLE SHALL BE USED
34 AND SHALL APPLY TO ENFORCE VIOLATIONS OF:

35 (1) THIS SUBTITLE; OR

36 (2) ANY REGULATION ADOPTED UNDER THIS SUBTITLE.

37 7-516. APPLICATION OF SUBTITLE.

38 (A) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
39 AFFECTING, THE PLANNING OR ZONING AUTHORITY OF A COUNTY OR MUNICIPAL
40 CORPORATION.

22

1 (B) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
2 AFFECTING, ANY TORT ACTION AGAINST ANY ~~APPLICANT~~ PARTICIPANT.

3 **Article 83A - Department of Business and Economic Development**

4 SUBTITLE 9. BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM.

5 3-901. DEFINITIONS.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) (1) "BROWNFIELDS SITE" MEANS:

9 (I) AN ELIGIBLE PROPERTY, AS DEFINED IN § 7-501 OF THE
10 ENVIRONMENT ARTICLE, THAT IS:

11 1. OWNED OR OPERATED BY AN INCULPABLE PERSON, AS
12 DEFINED IN § 7-501 OF THE ENVIRONMENT ARTICLE; AND

13 2. LOCATED IN A TAXING JURISDICTION THAT HAS
14 ELECTED TO PARTICIPATE IN THE BROWNFIELDS REVITALIZATION INCENTIVE
15 PROGRAM IN ACCORDANCE WITH § 9-109 9-229 OF THE TAX - PROPERTY ARTICLE; OR

16 (II) PROPERTY WHERE THERE IS A RELEASE, DISCHARGE, OR
17 THREATENED RELEASE OF OIL, AS DEFINED IN § 4-401 OF THE ENVIRONMENT
18 ARTICLE, THAT IS:

19 1. SUBJECT TO A CORRECTIVE ACTION PLAN APPROVED BY
20 THE DEPARTMENT OF THE ENVIRONMENT IN ACCORDANCE WITH TITLE 4 OF THE
21 ENVIRONMENT ARTICLE; AND

22 2. LOCATED IN A TAXING JURISDICTION THAT HAS
23 ELECTED TO PARTICIPATE IN THE BROWNFIELDS REVITALIZATION INCENTIVE
24 PROGRAM IN ACCORDANCE WITH § 9-109 9-229 OF THE TAX - PROPERTY ARTICLE.

25 (2) "BROWNFIELDS SITE" DOES NOT INCLUDE PROPERTY THAT IS
26 OWNED OR OPERATED BY A RESPONSIBLE PERSON OR A PERSON RESPONSIBLE FOR
27 THE DISCHARGE.

28 (C) "PERSON RESPONSIBLE FOR THE DISCHARGE" HAS THE MEANING STATED
29 IN § 4-401 OF THE ENVIRONMENT ARTICLE.

30 ~~(C)~~ (D) "QUALIFIED BROWNFIELDS SITE" MEANS A BROWNFIELDS SITE
31 THAT HAS BEEN DETERMINED BY THE DEPARTMENT OF BUSINESS AND ECONOMIC
32 DEVELOPMENT TO BE ELIGIBLE FOR FINANCIAL INCENTIVES UNDER § 3-903 OF THIS
33 SUBTITLE.

34 ~~(D)~~ (E) "RESPONSIBLE PERSON" HAS THE MEANING STATED IN § 7-201 OF
35 THE ENVIRONMENT ARTICLE.

23

1 3-902. BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM.

2 (A) THERE IS A BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM IN
3 THE DEPARTMENT.

4 (B) THE PURPOSE OF THE BROWNFIELDS REVITALIZATION INCENTIVE
5 PROGRAM IS TO:

6 (1) PROVIDE FINANCIAL INCENTIVES FOR REDEVELOPMENT OF
7 PROPERTIES PREVIOUSLY USED FOR COMMERCIAL OR INDUSTRIAL PURPOSES;

8 (2) PROVIDE FINANCIAL INCENTIVES FOR REDEVELOPMENT OF
9 PROPERTIES WITHIN LOCALLY DESIGNATED GROWTH AREAS;

10 (3) PREVENT URBAN SPRAWL;

11 (4) ENCOURAGE ECONOMIC REVITALIZATION;

12 (5) EXPAND EMPLOYMENT OPPORTUNITIES; AND

13 (6) PROVIDE FINANCIAL INCENTIVES FOR ~~LISTED~~ QUALIFIED
14 BROWNFIELDS SITES.

15 3-903. DETERMINATION OF ELIGIBILITY AS BROWNFIELDS SITE.

16 (A) (1) AT THE TIME A PERSON APPLIES TO PARTICIPATE IN THE
17 VOLUNTARY CLEANUP PROGRAM UNDER TITLE 7, SUBTITLE 5 OF THE
18 ENVIRONMENT ARTICLE OR RECEIVES APPROVAL FROM THE DEPARTMENT OF THE
19 ENVIRONMENT FOR THE IMPLEMENTATION OF A CORRECTIVE ACTION PLAN
20 UNDER TITLE 4 OF THE ENVIRONMENT ARTICLE THE PERSON MAY SUBMIT A
21 REQUEST TO THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT TO
22 DETERMINE WHETHER THE PERSON QUALIFIES FOR FINANCIAL INCENTIVES FOR
23 THE POTENTIAL REDEVELOPMENT OF A BROWNFIELDS SITE.

24 (2) (I) WITHIN 30 DAYS AFTER RECEIPT OF A REQUEST UNDER
25 PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL NOTIFY AN
26 APPLICANT WHETHER, IF APPROVED TO PARTICIPATE IN THE VOLUNTARY
27 CLEANUP PROGRAM OR A CORRECTIVE ACTION PLAN, THE APPLICANT QUALIFIES
28 FOR FINANCIAL INCENTIVES FOR THE REDEVELOPMENT OF A BROWNFIELDS SITE.

29 (II) IN THE DEPARTMENT'S NOTICE OF AN APPLICANT'S
30 QUALIFICATION FOR FINANCIAL INCENTIVES UNDER SUBPARAGRAPH (I) OF THIS
31 PARAGRAPH, THE DEPARTMENT SHALL SPECIFY WHICH OF THE CRITERIA SET
32 FORTH IN PARAGRAPH (4) THE APPLICANT MET.

33 (3) THE DEPARTMENT SHALL DETERMINE THE ELIGIBILITY OF A SITE
34 AS A QUALIFIED BROWNFIELDS SITE BASED ON WHETHER:

35 (I) THE PROPERTY IS LOCATED IN A DENSELY POPULATED URBAN
36 CENTER AND IS SUBSTANTIALLY UNDERUTILIZED; OR

37 (II) THE PROPERTY IS AN EXISTING OR FORMER INDUSTRIAL OR
38 COMMERCIAL SITE THAT POSES A THREAT TO PUBLIC HEALTH OR THE
39 ENVIRONMENT.

24

1 (4) THE DEPARTMENT MAY CONSIDER THE FOLLOWING CRITERIA
2 WHEN SELECTING A QUALIFIED BROWNFIELDS SITE:

3 (I) THE FEASIBILITY OF REDEVELOPMENT;

4 (II) THE PUBLIC BENEFIT PROVIDED TO THE COMMUNITY AND
5 THE STATE THROUGH THE REDEVELOPMENT OF THE PROPERTY;

6 (III) THE EXTENT OF RELEASES OR THREATENED RELEASES AT
7 THE SITE AND THE DEGREE TO WHICH THE CLEANUP AND REDEVELOPMENT OF
8 THE SITE WILL PROTECT PUBLIC HEALTH OR THE ENVIRONMENT;

9 (IV) THE POTENTIAL TO ATTRACT OR RETAIN MANUFACTURING
10 OR OTHER ECONOMIC BASE-TYPE EMPLOYERS;

11 (V) THE ABSENCE OF IDENTIFIABLE AND FINANCIALLY SOLVENT
12 RESPONSIBLE PERSONS; OR

13 (VI) ANY OTHER FACTOR RELEVANT AND APPROPRIATE TO
14 ECONOMIC DEVELOPMENT.

15 (B) DURING THE COURSE OF EVALUATING POTENTIAL QUALIFIED
16 BROWNFIELDS SITES, THE DEPARTMENT SHALL CONSULT WITH:

17 (1) THE DEPARTMENT OF THE ENVIRONMENT, THE OFFICE OF
18 PLANNING, AND RELEVANT LOCAL OFFICIALS;

19 (2) THE NEIGHBORING COMMUNITY AND ANY CITIZEN GROUPS
20 LOCATED IN THE COMMUNITY;

21 (3) REPRESENTATIVES OF STATE AND LOCAL ENVIRONMENTAL
22 ORGANIZATIONS;

23 (4) PUBLIC HEALTH EXPERTS; AND

24 (5) ANY OTHER PERSON THE DEPARTMENT CONSIDERS APPROPRIATE.

25 (C) THE DEPARTMENT SHALL DEVELOP A PROGRAM OF FINANCIAL
26 INCENTIVES, INCLUDING LOW-INTEREST LOANS AND GRANTS, TO ASSIST PERSONS
27 WHO PARTICIPATE IN THE BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM.

28 3-904. BROWNFIELDS REVITALIZATION INCENTIVE FUND.

29 (A) THERE IS A BROWNFIELDS REVITALIZATION INCENTIVE FUND IN THE
30 DEPARTMENT THAT IS ESTABLISHED AS A NONLAPSING, REVOLVING SPECIAL FUND.

31 (B) THE FUND CONSISTS OF:

32 (1) MONEYS COLLECTED UNDER § ~~9-109~~ 9-229 OF THE TAX - PROPERTY
33 ARTICLE;

34 (2) MONEYS MADE AVAILABLE TO THE FUND THROUGH FEDERAL
35 PROGRAMS OR PRIVATE CONTRIBUTIONS;

25

1 (3) INCOME FROM INVESTMENTS THAT THE STATE TREASURER MAKES
2 FROM MONEYS IN THE FUND;

3 (4) REPAYMENTS OF PRINCIPAL AND INTEREST FROM LOANS MADE
4 FROM THE FUND;

5 (5) PROCEEDS FROM THE SALE, DISPOSITION, LEASE, OR RENTAL BY
6 THE DEPARTMENT OF COLLATERAL RELATED TO ANY FINANCING PROVIDED BY
7 THE DEPARTMENT UNDER THIS SUBTITLE; AND

8 (6) ANY OTHER MONEYS AVAILABLE TO THE FUND.

9 (C) THE DEPARTMENT SHALL USE THE FUND TO PROVIDE FINANCIAL
10 INCENTIVES FOR THE REDEVELOPMENT OF BROWNFIELDS SITES AS PROVIDED IN §
11 3-903(C) OF THIS SUBTITLE.

12 3-905. APPLICATION OF SUBTITLE.

13 THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
14 AFFECTING, THE PLANNING AND ZONING AUTHORITY OF A COUNTY OR MUNICIPAL
15 CORPORATION.

16 **Article - Tax - Property**

17 ~~9-109~~ 9-229. FINANCIAL INCENTIVES FOR QUALIFIED BROWNFIELDS SITES.

18 (A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) "QUALIFIED BROWNFIELDS SITE" HAS THE MEANING STATED IN ARTICLE
21 83A, ~~§ 3-901(C)~~ § 3-901(D) OF THE CODE.

22 (C) "TAXING JURISDICTION" MEANS:

23 (1) ~~THE STATE~~;

24 ~~(2) A COUNTY OR BALTIMORE CITY; OR~~

25 ~~(3) (2) A MUNICIPAL CORPORATION.~~

26 (D) (1) A TAXING JURISDICTION MAY ELECT TO PARTICIPATE IN THE
27 BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM UNDER ARTICLE 83A, TITLE
28 3, SUBTITLE 9 OF THE CODE.

29 (2) IF A TAXING JURISDICTION ELECTS TO PARTICIPATE IN THE
30 BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM, THE TAXING JURISDICTION
31 SHALL:

32 (I) ENACT THE NECESSARY LEGISLATION TO GRANT THE
33 PROPERTY TAX CREDITS ESTABLISHED UNDER THIS SECTION; AND

34 (II) NOTIFY THE DEPARTMENT OF BUSINESS AND ECONOMIC
35 DEVELOPMENT.

26

1 (3) IF A TAXING JURISDICTION ELECTS TO PARTICIPATE IN THE
2 BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM, THE PROPERTY TAX
3 CREDITS UNDER THIS SECTION SHALL ALSO APPLY TO THE STATE PROPERTY TAX IN
4 THAT JURISDICTION IN THE SAME PERCENTAGE AND FOR THE SAME DURATION AS
5 PROVIDED FOR THE PROPERTY TAX OF THE TAXING JURISDICTION.

6 (E) FOR EACH OF THE 5 TAXABLE YEARS IMMEDIATELY FOLLOWING THE
7 FIRST REVALUATION OF THE PROPERTY AFTER COMPLETION OF A VOLUNTARY
8 CLEANUP OR CORRECTIVE ACTION PLAN OF A BROWNFIELDS SITE, EACH TAXING
9 JURISDICTION WHERE A QUALIFIED BROWNFIELDS SITE IS LOCATED SHALL:

10 (1) GRANT A PROPERTY TAX CREDIT AGAINST THE PROPERTY TAX
11 IMPOSED ON THE QUALIFIED BROWNFIELDS SITE IN AN AMOUNT EQUAL TO 50% OF
12 THE PROPERTY TAX ATTRIBUTABLE TO THE INCREASE IN THE ASSESSMENT OF THE
13 QUALIFIED BROWNFIELDS SITE, INCLUDING IMPROVEMENTS ADDED TO THE SITE
14 WITHIN THE 5-YEAR PERIOD AS PROVIDED UNDER THIS SUBSECTION, OVER THE
15 ASSESSMENT OF THE QUALIFIED BROWNFIELDS SITE BEFORE THE VOLUNTARY
16 CLEANUP; AND

17 (2) CONTRIBUTE TO THE BROWNFIELDS REVITALIZATION INCENTIVE
18 FUND UNDER ARTICLE 83A, § 3-904 OF THE CODE, 30% OF THE PROPERTY TAX
19 ATTRIBUTABLE TO THE INCREASE IN THE ASSESSMENT OF THE BROWNFIELDS SITE,
20 INCLUDING IMPROVEMENTS ADDED TO THE SITE WITHIN THE 5-YEAR PERIOD AS
21 PROVIDED UNDER THIS SUBSECTION, OVER THE ASSESSMENT OF THE QUALIFIED
22 BROWNFIELDS SITE BEFORE THE VOLUNTARY CLEANUP.

23 (F) A TAXING JURISDICTION MAY GRANT A PROPERTY TAX CREDIT UP TO AN
24 ADDITIONAL 20% OF THE REMAINING PROPERTY TAX ATTRIBUTABLE TO THE
25 INCREASE IN THE ASSESSMENT OF THE QUALIFIED BROWNFIELDS SITE INCLUDING
26 IMPROVEMENTS ADDED TO THE SITE OVER THE ASSESSMENT OF THE QUALIFIED
27 BROWNFIELDS SITE BEFORE THE VOLUNTARY CLEANUP.

28 (G) (1) A CREDIT UNDER THIS SECTION MAY NOT BE CALCULATED ON AN
29 INCREASE IN ASSESSMENT DUE TO THE TERMINATION OF A USE VALUE UNDER §§
30 8-209 THROUGH 8-217 OR §§ 8-220 THROUGH 8-225 OF THIS ARTICLE.

31 (2) IF THE QUALIFIED BROWNFIELDS SITE ON WHICH THE VOLUNTARY
32 CLEANUP IS COMPLETED HAD A USE VALUE IMMEDIATELY BEFORE THE CLEANUP,
33 THE CREDIT SHALL BE CALCULATED ON AN ASSESSMENT AS IF THE PARCEL HAD
34 BEEN VALUED AT MARKET VALUE.

35 (H) IN A DESIGNATED ENTERPRISE ZONE, ~~THE STATE OR~~ A TAXING
36 JURISDICTION MAY EXTEND THE TAX CREDIT AUTHORIZED UNDER THIS SECTION
37 UP TO AN ADDITIONAL 5 YEARS.

38 (I) A PROPORTIONAL SHARE OF A TAXING JURISDICTION'S CONTRIBUTION
39 FOR EACH QUALIFIED BROWNFIELDS SITE TO THE BROWNFIELDS REVITALIZATION
40 FUND UNDER SUBSECTION (E)(2) OF THIS SECTION SHALL BE DESIGNATED FOR
41 FINANCIAL INCENTIVES TO BE PROVIDED FOR QUALIFIED BROWNFIELDS SITES IN
42 THE JURISDICTION MAKING THAT CONTRIBUTION.

27

1 (J) A TAXING JURISDICTION SHALL TERMINATE ANY PROPERTY TAX CREDIT
2 UNDER THIS SECTION IF:

3 (1) A PERSON RECEIVING A CREDIT UNDER THIS SECTION WITHDRAWS
4 FROM THE VOLUNTARY CLEANUP PROGRAM UNDER § 7-512(A) OR (B) OF THE
5 ENVIRONMENT ARTICLE; OR

6 (2) THE DEPARTMENT OF THE ENVIRONMENT WITHDRAWS APPROVAL
7 OF A RESPONSE ACTION PLAN, OR A CERTIFICATE OF COMPLETION UNDER § 7-512(E)
8 AND (F) OF THE ENVIRONMENT ARTICLE.

9 14-902. TAX ABATEMENT.

10 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (2) "QUALIFIED BROWNFIELDS SITE" HAS THE MEANING STATED IN
13 ARTICLE 83A, § 3-901(D) OF THE CODE.

14 (3) "TAX" HAS THE MEANING STATED IN § 14-801(C) OF THIS TITLE.

15 (B) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION
16 MAY GRANT, BY LAW, A TAX ABATEMENT AGAINST THE OVERDUE COUNTY OR
17 MUNICIPAL CORPORATION PROPERTY TAXES IMPOSED ON REAL PROPERTY THAT IS
18 DESIGNATED AS A QUALIFIED BROWNFIELDS SITE.

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
20 Environment shall report to the Governor and, subject to § 2-1312 of the State
21 Government Article, to the House Environmental Matters Committee and the Senate
22 Economic and Environmental Affairs Committee:

23 1. On or before July 1 of 1998, 1999, and 2000, on:

24 a. The reasonableness of the fees, the use of the Voluntary Cleanup Fund
25 established under this Act and whether the Voluntary Cleanup Fund is fully self-funded;
26 and

27 b. The geographic location and other characteristics of applicants to the
28 Voluntary Cleanup Program, the number of applications and response action plans
29 approved and denied, and the reasons for the Department's denial; and

30 2. On or before July 1, 2000, on the status of the Voluntary Cleanup Program
31 established under this Act, including the impact of having a cut-off date for eligibility on
32 the effectiveness of the Program and on the ability of the Program to encourage the
33 cleanup of the optimum number of contaminated sites.

34 SECTION 3. AND BE IT FURTHER ENACTED, That the Department of
35 Business and Economic Development shall report to the Governor and, subject to §
36 2-1312 of the State Government Article, to the House Environmental Matters Committee
37 and the Senate Economic and Environmental Affairs Committee on or before July 1 of
38 1998, 1999, and 2000, on:

39 1. The geographic location and other characteristics of applicants to the
40 Brownfields Revitalization Incentive Program, the number of requests to participate in
41 the Program approved and denied, and the Department's reasons for the Department's
42 denial;

28

1 2. The availability of financial incentives to qualified Brownfields sites, including
2 information on the types of incentives available as well as on the amount of assistance
3 provided under those incentives; and

4 3. The advisability of making responsible persons who did not cause or
5 contribute to the contamination of a potential Brownfields site eligible to participate in
6 the Brownfields Revitalization Incentive Program.

7 SECTION 4. AND BE IT FURTHER ENACTED, That Title 7, Subtitle 5 of the
8 Environment Article ~~as enacted by this Act~~ does not affect, and may not be construed as
9 affecting, any civil action pending against any applicant in the Voluntary Cleanup
10 Program on the effective date of this Act.

11 ~~SECTION 5. AND BE IT FURTHER ENACTED, That the first \$100,000~~
12 ~~contributed to the Brownfields Revitalization Incentive Fund under § 9-109 of the Tax-~~
13 ~~Property Article shall be transferred to the State Hazardous Substance Control Fund~~
14 ~~under Title 7, Subtitle 2 of the Environment Article to be used by the Department of the~~
15 ~~Environment for costs incurred by the Department in the oversight and administration of~~
16 ~~cleanup activities under the State Hazardous Substance program for which the~~
17 ~~Department is currently restricted in its use of bond funds as a result of a ruling by the~~
18 ~~Internal Revenue Service.~~

19 SECTION 6: 5. AND BE IT FURTHER ENACTED, That the catchlines contained
20 in this Act are not law and may not be considered to be enacted as part of this Act.

21 SECTION 7: 6. AND BE IT FURTHER ENACTED, That this Act is an
22 emergency measure, is necessary for the immediate preservation of the public health and
23 safety, has been passed by a yea and nay vote supported by three-fifths of all the members
24 elected to each of the two Houses of the General Assembly, and shall take effect from the
25 date it is enacted.